IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

CWP No.18166 of 2006
Date of decision: 17.11.2007

Smt. Bhajan Kaur.

…Petitioner

Vs.

State of Punjab and ors.

…Respondents

CORUM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE AJAI LAMBA.

Present: Mr. Ramesh Sharma, Advocate
for the petitioner.

Mr. Suvir Sehgal, Addl. Advocate General, Punjab.

Adarsh Kumar Goel, J.

This petition seeks a direction for grant of family pension to the petitioner.

Case of the petitioner is that her husband was working as Chowkidar with Arya Kanya High School, Kharar. He joined service on 12.8.1978 and died in harness on 24.1.1988. On coming into force of The Punjab Privately Managed Recognised Aided School Retirement Benefit Scheme, 1992 w.e.f. 5.2.1987, the petitioner applied for and was granted family pension vide order dated 11.3.1994 and all arrears of pension were also paid. The petitioner got family pension upto 1996 but, thereafter, the same was stopped on the ground that the pension was wrongly

paid. The husband of the petitioner had not completed 10 years qualifying service for family pension.

Case of the petitioner is that qualifying service of 10 years for pension, was not applicable to the family pension, as has been held by a Division Bench of this Court in the case of ***Tripta Devi v. State of Punjab*** (C.W.P. No.5981 of 1999) decided on 15.11.2000. Requirement of qualifying service for pension had no relevance for grant of family pension.

Reply is stated to have been filed, but the same not being on record, we have accepted a copy of reply handed over by learned counsel for the State. Therein, stand taken is that as per clarification dated 2.7.1999, Annexure R-1, family pension could also not be given where an employee had not rendered qualifying service.

We have considered the rival submissions and perused the record.

It is well settled that the concept of family pension is different from pension. While pension is a retirement benefit payable to the employee himself after his retirement, family pension is payable to specified members of the family of a late employee to compensate such members for the death of the employee, rendering members of the family destitute. While pension is on account of service rendered and is earned by the employee, family pension is given to meet the situation of untimely death faced by a widow or other members of the family rendered destitute. Reference may be made to judgment of the Hon'ble

Supreme Court in ***Jodh Singh v. Union of India and another*** AIR 1980 SC 2081. Family pension being a condition of service will depend on the service rules. In this connection, reference may be made to judgment of the Hon'ble Supreme Court in ***State of Gujarat v. Bhaterdevi Ramnivas Sanwalram*** AIR 2002 SC 3367 (para 12). Qualifying service can be laid down under the rules, but in the present case, no qualifying service has been specified for grant of family pension. Qualifying service has been specified only for pension. In such a situation, there is no scope for clarification. Clarification cannot substitute the rules. Judgment in ***Tripta Devi*** *(supra)* is thus, fully applicable. No contrary view has been shown by learned counsel for the State.

Accordingly, we allow this petition and direct that family pension be restored to the petitioner within three months from the receipt of a copy of this order.

(ADARSH KUMAR GOEL)
JUDGE

November 17, 2007 **(AJAI LAMBA)**

ashwani **JUDGE**